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Attorneys for Plaintiff  
SHELTER ISLAND YACHTWAYS, LTD.  
a California Limited Partnership,  
dba SHELTER ISLAND BOATYARD

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SHELTER ISLAND YACHTWAYS, LTD., a  
California Limited Partnership, dba SHELTER  
ISLAND BOATYARD,

Plaintiff,

v.

M/Y SUNDANCE, Official No. 521498, A  
HATTARAS MOTORYACHT OF  
APPROXIMATELY 33 FEET IN LENGTH  
AND 12 FEET IN BEAM, AND ALL OF HER  
ENGINES, TACKLE, ACCESSORIES,  
EQUIPMENT, FURNISHINGS AND  
APPURTENANCES, *in rem*,

Defendant.

Case No. 07-CV 2015 DMS (WMc)

IN ADMIRALTY

DECLARATION OF PHILIP E.  
WEISS IN SUPPORT OF MOTION  
FOR ORDER FOR  
INTERLOCUTORY VESSEL SALE  
AND AUTHORIZATION TO  
CREDIT BID

F.R.C.P. Supplemental Admiralty  
Rule E(9); 46 U.S.C. Sections 30101-  
31343

SUBMITTED ON PAPERS  
(Oral Arguments Not Requested)

I, Philip E. Weiss, declare under penalty of perjury under the laws of the United States  
and the State of California as follows:

1. I am admitted to practice in all Federal and State Courts located within the  
State of California, including the United States District Court for the Southern District of  
California. I am counsel of record for the Plaintiff in this action. The matters herein asserted

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1 are of my personal knowledge, and as to such matters I could and would competently testify  
2 thereto under oath, should I be called to do so.

3 2. On September 25, 2007 I caused a letter to be mailed to Wayne Oliver, addressed to  
4 the address reflected as his on U.S. Coast Guard records for the DEFENDANT VESSEL. A true  
5 and correct copy of this letter is attached hereto as Exhibit. In this letter I made demand that the  
6 DEFENDANT VESSEL be immediately removed from PLAINTIFF's boatyard, and advised Mr.  
7 Oliver that lay day charges, calculated at the boatyard's usual rates, would be imposed until the  
8 DEFENDANT VESSEL was removed, and further that PLAINTIFF would seek the arrest of the  
9 trespassing DEFENDANT VESSEL if she was not removed within five days. This letter also  
10 urged Mr. Oliver to retain the services of an experienced maritime lawyer if he refused to remove  
11 his vessel or had doubts as to PLAINTIFF's right to seek the arrest of the offending vessel.

12 3. Having received no response to his letter, I contacted Mr. Oliver by telephone on  
13 October 4, 2007 to discuss the situation. At that time Mr. Oliver indicated he would in fact  
14 remove the DEFENDANT VESSEL the following week. During this conversation I reminded  
15 Mr. Oliver that lay day fees were continuing to accrue at the rate of \$66.00 per day (calculated at  
16 the usual rate of \$2.00 per foot of boat length per day). He agreed he would pay the lay day  
17 charges, and also indicated he would reimburse PLAINTIFF for the attorneys' fees it incurred in  
18 connection with the instant matter. At this time Mr. Oliver indicated he would remove the vessel  
19 no later than the following Wednesday, October 10, 2007, and that he would pay the lay day  
20 charges and attorneys' fees on that date. In the interest of resolving the matter informally and  
21 avoiding an unnecessary use of the Court's valuable and limited resources, PLAINTIFF agreed  
22 to hold legal action in abeyance, to permit Mr. Oliver an opportunity to perform on his promises.  
23 Regrettably, he did not.

24 4. On October 10, 2007, the date by which Mr. Oliver was to have removed his  
25 vessel and paid all sums agreed due, he had neither removed the DEFENDANT VESSEL nor  
26 contacted PLAINTIFF or its attorney to explain why he had not done so, nor paid the sums  
27 agreed due. Accordingly, I again called Mr. Oliver, to inquire as to his intentions. Mr. Oliver  
28 advised he had been unable to move the vessel because his car "broke down" in Oregon, where

1 he apparently now resides. Asked why he did not then fly down to resolve the problem (which  
2 after all was growing larger by at least \$66.00 per day), Mr. Oliver told me he did not have the  
3 time to fly down because he had to go to a Veteran's Hospital. He did not explain, however, how  
4 he would have had time to drive to San Diego from Oregon without interfering with his hospital  
5 appointment, yet did not have the time to fly to San Diego. Mr. Oliver advised he was "working  
6 on getting the money" necessary to satisfy PLAINTIFF's claim. When asked, Mr. Oliver  
7 admitted he had not made arrangements for the accommodation of the DEFENDANT VESSEL  
8 once he removed it from PLAINTIFF's boatyard. When I asked him how long it would be  
9 before he would obtain the funds necessary to resolve this matter (pay lay day fees, remove his  
10 vessel and pay, as agreed, attorneys' fees), he could not or would not provide any estimate. I then  
11 then informed Mr. Oliver that the DEFENDANT VESSEL was continuing to interfere with  
12 boatyard operations, and that if she was not removed immediately PLAINTIFF would be left  
13 with no option but to seek the assistance of the Court. Mr. Oliver reiterated he "can't say when  
14 [he] will get the money" necessary to satisfy PLAINTIFF's claim and remove his boat.

15 5. I conducted today a search of the Yachtworld.com database (said to contain listings  
16 on over 118,000 vessels nationwide) for all listed 1968 34-foot Hatteras motoryachts. This search  
17 yielded only a single listing, with an asking price of \$24,900.00. A true and correct copy of this  
18 listing is attached hereto as Exhibit B. In contrast to the DEFENDANT VESSEL, the vessel listed at  
19 Yachtworld.com is said to be "pretty outside" with an interior in "good" condition, and with Chrysler  
20 440 engines that reportedly run "real good."

21 Executed this 25th day of March, 2008 at San Diego, California.

22  
23 \_\_\_\_\_  
s/Philip E. Weiss

24 Philip E. Weiss  
25 Attorney for Plaintiff  
26 Shelter Island Yachtways, Ltd.  
dba Shelter Island Boatyard  
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